

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE J&J INVESTMENT  
LITIGATION

Case No. 2:22-cv-00529-GMN-NJK

## Order

[Docket No. 44]

Pending before the Court is Defendant's motion to stay discovery pending resolution of its motion to dismiss. Docket No. 44.<sup>1</sup> Plaintiffs filed a response in opposition. Docket No. 48. Defendant filed a reply. Docket No. 49. The motion is properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed more fully below, the motion to stay discovery is **DENIED**.

The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). “The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending.” *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). Discovery should proceed absent a “strong showing” to the contrary. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). The case law in this District makes clear that requests to stay all discovery may be granted when: (1) the pending motion is potentially dispositive in scope and effect; (2) the potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken a “preliminary peek” at the merits of the potentially dispositive motion and is convinced that the plaintiff will be unable to state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).

<sup>1</sup> The motion to dismiss has been fully briefed. Docket No. 39 (motion); Docket No. 45 (response); Docket No. 52 (reply).

1       A stay of discovery is not warranted. Most significantly, the Court has taken a preliminary  
 2 peek at the motion to dismiss and is not convinced that it will be granted. *See Evans v. ZB, N.A.*,  
 3 779 Fed. Appx. 443, 444-47 (9th Cir. 2019) (reversing dismissal of aiding and abetting claim  
 4 brought under California law); *Camenisch v. Umpqua Bank*, 2021 WL 9181171, at \*3-4 (N.D. Cal.  
 5 Jan. 28, 2021) (denying motion to dismiss aiding and abetting claim brought under California law);  
 6 *in re Woodbridge Invs. Litig.*, 2020 WL 4529739, at \*5-7 (C.D. Cal. Aug. 5, 2020) (same); *Chang*  
 7 *v. Wells Fargo Bank, N.A.*, 2020 WL 1694360, at \*2-7 (N.D. Cal. Apr. 7, 2020) (same); *see also*  
 8 Docket No. 52 at 4-5 n.1 (acknowledging potential that Nevada courts will look to California law  
 9 for guidance).<sup>2</sup> It bears repeating that the filing of a non-frivolous dispositive motion, standing  
 10 alone, is not enough to warrant staying discovery. *See, e.g., Tradebay*, 278 F.R.D. at 603. Instead,  
 11 the Court must be “convinced” that the dispositive motion will be granted. *See, e.g., id.* “That  
 12 standard is not easily met.” *Kor Media*, 294 F.R.D. at 583. “[T]here must be *no question* in the  
 13 court’s mind that the dispositive motion will prevail, and therefore, discovery is a waste of effort.”  
 14 *Id.* (quoting *Trazska v. Int’l Game Tech.*, 2011 WL 1233298, \*3 (D. Nev. Mar. 29, 2011))  
 15 (emphasis in original). The Court requires this robust showing because applying a lower standard  
 16 would likely result in unnecessary delay in many cases. *Id.* (quoting *Trazska*, 2011 WL 1233298,  
 17 at \*4).<sup>3</sup>

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18       <sup>2</sup> Conducting the preliminary peek puts the undersigned in an awkward position because  
 19 the assigned district judge will decide the motion to dismiss may have a different view of its merits.  
 20 *See Tradebay*, 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that  
 21 motion is not intended to prejudice its outcome. *See id.* As a result, the undersigned will not  
 22 provide a lengthy discussion of the merits of the pending motion to dismiss in this instance.  
 23 Nonetheless, the undersigned has carefully reviewed the arguments presented in the underlying  
 24 motion and subsequent briefing.

25       <sup>3</sup> Defendant’s motion to stay discovery suggests that its burden in engaging in discovery  
 26 alone warrants a stay. Docket No. 44 at 9-10. The case cited does not support such a contention.  
 27 *See Ortega v. Harmony Homes, Inc.*, 2015 WL 4997319, at \*2 (D. Nev. Aug. 20, 2015) (“a stay  
 28 of discovery should be ordered *only if*, after taking a ‘preliminary peek’ at the merits of the pending  
 29 dispositive motion, the court is ‘convinced’ that the Plaintiff will be unable to state a claim for  
 30 relief” (emphasis added)). Indeed, it has long been clear that “[t]he fact that discovery may involve  
 31 inconvenience and expense is not sufficient, standing alone, to support a stay of discovery.” *Kor*  
 32 *Media*, 294 F.R.D. at 583 (citing *Turner Broadcasting*, 175 F.R.D. at 556). For the first time in  
 33 reply, Defendant goes a step further by arguing that it need not meet the traditional standards for  
 34 a stay of discovery because it can meet a more pliable “good cause” standard. *See* Docket No. 49  
 35 at 8-9 (citing *Jaramillo v. Area 15 Las Vegas LLC*, 2021 WL 5826312 (D. Nev. Dec. 8, 2021)).  
 36 The Court declines to consider an argument made for the first time in reply. *Brand v. Kijakazi*,  
 37 575 F. Supp. 3d 1265, 1273 (D. Nev. 2021).

1 Accordingly, the motion to stay discovery is **DENIED**.  
2 IT IS SO ORDERED.  
3 Dated: September 28, 2022

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5 Nancy J. Koppe  
6 United States Magistrate Judge  
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